

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 284 OF 2005

MR.ARNOLD NAZARETH AND ANR., ...Petitioners

Versus

MR.NICOLAU FERNANDES(DEC.) AND Respondents
ANR.,

Shri Rohit Bras De Sa, Advocate for the Petitioners.

Coram:- R. M. LODHA, J.

Date:- 21st October, 2005

P.C.:

Heard Shri R. Bras de Sa, learned counsel for the petitioners.

By the impugned order the trial Court has granted leave to defendant no.2 to amend the written statement and set up the plea of tenancy.

The learned counsel for the petitioners (original plaintiffs) submits that the defendant No.2 having set up the case in the written statement that he was mundkar, it was not permissible for him to plead that he was tenant.

The submission does not impress me. It is always open to the defendant to set up alternative plea. Such alternative plea even may be inconsistent to some extent. In this backdrop, the grant of leave by the trial Court to the defendant No.2 to set up the plea of tenancy cannot be said to suffer from any error, warranting interference by this Court in extraordinary jurisdiction.

Writ Petition is dismissed in limine. It will be open to the plaintiffs to file rejoinder/replication to the amended written statement within four

weeks from today.

R. M. LODHA, J.

sl.